STATEMENT OF WILLIAM L. KOVACS
VICE PRESIDENT
U.S. CHAMBER OF COMMERCE
BEFORE THE
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON REGULATORY AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
ON THE SUBJECT OF
THE PAPERWORK REDUCTION ACT AT 25: OPPORTUNITIES TO STRENGTHEN AND IMPROVE THE LAW
MARCH 8, 2006

I. INTRODUCTION

Madam Chairman and members of the committee, thank you for the opportunity to testify before you today on the topic of "The Paperwork Reduction Act at 25: Opportunities to Strengthen and Improve the Law." I am William Kovacs, Vice President for Environment, Technology, and Regulatory Affairs at the U.S. Chamber of Commerce. The U.S. Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

As a business federation, the U.S. Chamber is all too familiar with the overwhelming paperwork burdens our members face at the hands of government regulators. My testimony today will focus on a brief review of the historical efforts by Congress to ensure the quality and integrity of the information collected and disseminated by federal agencies and the agencies failings to implement congressional intent, and the U.S. Chamber's recommendations to help make the Paperwork Reduction Act of 1980[1] (PRA) more effective.

I would like to begin my testimony today by briefly discussing historical congressional efforts to ensure the quality and integrity of information collected and disseminated by the federal government, what the U.S. Chamber views as the principal difficulties with the PRA, and several recommendations that could help make it more effective.

II. HISTORY OF THE PRA

[1] The Paperwork Reduction Act of 1980, 94 Stat. 2812, P.L. 96-511, 44 USC §3501; Dec. 11, 1980.

Since at least 1942, with the passage of the Federal Reports Act, we know that Congress has been interested in promoting the quality, integrity, and utility of information collected and disseminated by the federal government. That act made it the policy of Congress not only to minimize the paperwork burden on U.S. businesses, but also to assure the necessity and maximize the usefulness of information collected from the public and used or disseminated by the government.[2]

Congress authorized the Bureau of the Budget (which, in 1970, became the Office of Management and Budget) through the Federal Reports Act to determine whether a collection of information by the federal government was really necessary and useful in reducing burden. This review function essentially created a gatekeeper that would screen out any information collections that did not meet the Federal Reports Act's quality standards. Over the years, however, the efficacy of the act was eroded as more and more exemptions were created to circumvent the act's stringent requirements. By 1979, more than 80% of the federal paperwork burden had become exempt from the now ineffectual Federal Reports Act.

Criticism of government red tape continued to grow in direct proportion to the ever-increasing federal paperwork demands placed on the public each year. In 1980, Congress again took steps to reduce the paperwork burden on U.S. businesses and to promote the utility and quality of data collected and disseminated by federal agencies. Passage of the PRA marked the first broad-scale effort by Congress to manage the federal government's information activities. The PRA was enacted for the primary purpose of minimizing the federal paperwork burden on the public, and maximizing the utility of collected and disseminated information.[3] Through a diverse range of provisions, the PRA established a process intended to simplify and reduce the duplicative, onerous, and often unnecessary, information collection requests from the federal government.

The PRA also created the Office of Information and Regulatory Affairs (OIRA) to oversee agency efforts to reduce the paperwork burden. OIRA would be the final arbiter of whether an "information collection request" (ICR) complied with the PRA, including whether the information would have a "practical utility" for the agency.[4] Six years later, Congress reauthorized and amended the PRA (1986 amendments) and strengthened the act by including an additional charge to...*maximize the usefulness of information collected and disseminated by the Federal Government.*[5]

It became clear, however, that the PRA and the 1986 amendments failed to stem the growing tide of paperwork that was drowning the American public. Despite best efforts, the number of paperwork burden hours continued to rise at an alarming rate each year.

---

[2] "It is hereby declared to be the policy of the Congress that information which may be needed by the various Federal agencies should be obtained with a minimum burden on business enterprises...that all unnecessary duplication of efforts in obtaining such information...should be eliminated as rapidly as practicable; and that information collected and tabulated by any Federal agency should insofar as is expedient be tabulated in a manner to maximize the usefulness of the information to other Federal agencies and the public." Federal Reports Act of 1942, 56 Stat. 1078, P.L. 831-811; Dec. 24, 1942.

[3] "The purpose of this [Act] is (1) to minimize the federal paperwork burden...; (2) to minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information; and (3) to maximize the usefulness of information collected by the Federal Government" 44 USC §3501.

[4] 44 USC § 3504(c)(2).

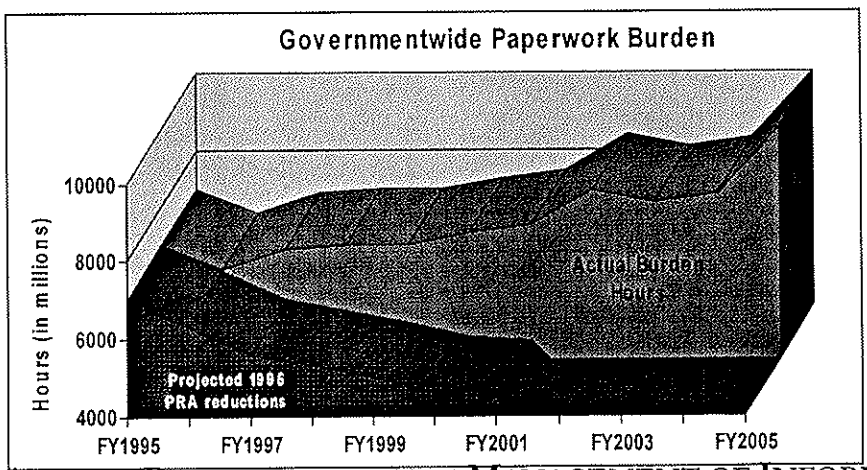
[5] P.L. 99-591, Oct. 30, 1986.

Therefore, in 1995, Congress revised, reauthorized, and codified the PRA in an attempt to enhance its overall effectiveness. The 1995 amendments to the PRA (1995 amendments)[6] added new language addressing the need for improved utility, quality, and integrity in the information collection process.[7]

Perhaps the two most significant additions to the PRA from the 1995 amendments were that each agency's Chief Information Officer certify that every ICR complies with the paperwork burden reduction requirements of the PRA,[8] and that federal agencies meet mandatory burden reduction levels each year.[9]

These two new safeguards offered a strengthened opportunity to effectively reduce the paperwork burden on the public. By requiring agency CIO's to certify that each ICR comport with the burden reduction provisions of the PRA—such as reducing duplicative requests and by ensuring that the request is necessary to the purposes of the agency—Congress mandated that agencies engage in a rigorous analytical process before approving any ICR. Likewise, by mandating yearly burden reduction levels, Congress, for the first time since the enactment of the PRA, required that the paperwork burden decrease.

Unfortunately, things did not work out as planned. The new safeguards put into place by the 1995 amendments were blatantly disregarded by the agencies, and as a result, last year alone, the number of burden hours on the public exceeded an extraordinary 10 billion hours—the highest in history.



Information compiled from the 1995 PRA Amendments, the Annual Information Collection Budget, and agency paperwork burden projections.

III. AGENCY RESISTANCE TO THE MANAGEMENT OF INFORMATION

It is a common misperception that federal attempts to manage the flow of information in-and-out-of government agencies were limited to the PRA. In fact, executive

---

[6] "The purposes of this [Act] are to...ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government...[to] improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in Government and society...[and] provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public...." P.L. 104-13, 44 USC § 3501(2), May 22, 1995.

[7] "The purposes of this [Act] are to...ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government...[to] improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in Government and society...[and] provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public...." P.L. 104-13, 44 USC § 3501(2), May 22, 1995.

[8] Id. at § 3506.

[9] Id. at § 3505.

orders, presidential initiatives, legislation, and information quality guidelines, have all been used in an attempt to improve the collection, reliability, and dissemination of information.

More often than not, though, congressional directives were met with resistance from OMB as it struggled to develop information management processes. Case in point, Congress had repeatedly urged OMB to develop procedural guidelines for ensuring the quality of data disseminated by federal agencies. In fact, there were no fewer than four congressional directives given to OMB requesting such guidelines. OMB simply chose to ignore these four requests, forcing Congress to mandate OMB's issuance of guidance to the agencies. Specifically:

A. 1995

The PRA directed OMB to...*ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government.* [10]

B. 1998

House Report on the Treasury, Postal Service, and General Government Appropriations Bill,[11] urged OMB to develop...*rules providing policy and procedural guidance* for ensuring the quality of information disseminated by federal agencies.[12]

C. 1999

The House incorporated a data quality provision in the report that accompanied H.R. 4104, the Treasury and General Government Appropriations Act of 1999, requesting that OMB develop policy and procedural guidance to federal agencies in order to ensure and maximize the quality, objectivity, utility, and integrity of information that the federal government disseminates to the pubic. Following the House's lead, the Senate included similar data quality language in the conference report related to this legislation. This non-binding report language was then enacted as part of Public Law 105-277.

D. 2000

The Treasury and General Government Appropriations Bill, approved by the House Subcommittee, contained a requirement for OMB to issue rules on information quality. Representative Jo Ann Emerson subsequently sent a letter to

---

[10] 44 CFR, Chapter 35, Sec. 3501(2).

[11] House Report No. 105-592

[12] "The Committee urges the Office of Management and Budget (OMB) to develop, with public and Federal agency involvement, rules providing policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies, and information disseminated by non-Federal entities with financial support from the Federal government, in fulfillment of the purposes and provisions of the Paperwork Reduction Act of 1995 (P.L. 104-13). The Committee expects issuance of these rules by September 30, 1999." House Report No. 105-592.

OMB seeking an explanation as to why the agency had continually ignored congressional requests to issue data quality guidance. OMB responded that it was reluctant to issue one-size-fits-all regulations to enhance data quality.[13]

It was not until the passage of the Information Quality Act (IQA)[14] that OMB finally took action and developed the procedural guidelines Congress wanted.

To put it simply, the PRA is the filter through which information flows **into** the federal government, and the IQA is the filter through which information flows **out**. Together they represent the sentinels of the information management process that reduce paperwork burdens and increase the integrity of the federal government's information management system.

IV. RECOMMENDATIONS TO FIX THE PAPERWORK REDUCTION ACT

While it is certain that Congress has long been committed to minimizing the federal paperwork burden on the public, it is also certain that it has failed to achieve that goal. In the 26 years since the PRA was enacted, the paperwork burden level on U.S. businesses and the public has skyrocketed.

It appears that the two primary reasons for this failure are the breakdown in the certification process and the lack of enforcement of mandatory paperwork reduction goals.

A. CIO Certification Process

As mentioned above, agency CIO's are required to review each ICR and certify that it comports with the strictures of the PRA.[15] Congressional intent behind this requirement was to create a rigorous analytical process whereby CIO's would review the evidence supporting an agency's contention that an ICR was necessary and that it complied with the PRA. Any collection request that failed to meet PRA standards—that is, failed to meet paperwork reduction goals—would not be certified, nor sent to OMB for approval. Unfortunately, the rigorous analytical process envisioned by Congress failed to materialize and the CIO certification process has become nothing more than a routine administrative procedure. All too often an ICR is simply "rubber stamped" by a CIO without any analysis of the underlying documentation that shows it reduces burden.

---

[13] "At the present time, OMB is not convinced that new 'one-size-fits-all' rules will add much to the existing OMB guidance and oversight activity and the procedures followed by individual agencies. We are reluctant to issue more regulations without a clear sense that they would be useful in promoting data quality. We are also concerned that new regulations might prove counterproductive to the goal of increasing data quality. The Report suggests that agencies be required to establish a new 'petition' process under which persons could file formal 'complaints' over the quality of information. These administrative requirements could consume significant agency resources. An adversarial petition process also might discourage the type of free and open dialogue between the agency and the public that is crucial for identifying and addressing data quality issues." April 18, 2000, letter from John T. Spotila, OIRA Director, to Representaive Jo Ann Emerson.

[14] Section 515 of the Treasury and General Government Appropriations Act for Fiscal year 2001 (P.L. 106-554).

[15] Under the PRA, agency CIO's must ensure that every ICR is: (1) necessary; (2) not duplicative; (3) reduces burden; (4) clearly written; (5) compatible with the existing reporting and recordkeeping practices; (6) indicates length of time persons are required to maintain the records; (7) contains certification language; (8) useful to the agency and public; (9) uses effective and efficient statistical survey methodology; and (10) uses technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

That this assertion is correct is well understood by Congress. According to a recent study by the Government Accountability Office (GAO),[16] federal agency CIO's had certified that PRA standards were met in 98% of that year's 8,211 collections. Yet, when the GAO randomly sampled these ICRs it found that support for that certification was missing or inadequate in 65% of the cases. The reason for this shocking disparity was clear—CIO's were not analyzing the underlying documentation to ensure burden reduction standards were being met.

But why should agency CIO's take the time and effort to ensure the integrity of the certification process? After all, there are no penalties for not doing so.

The current CIO review and certification process required under the 1995 amendments is broken because the PRA lacks any enforcement mechanism or penalty provisions for noncompliance. As such, the certification process is an ineffective tool for verifying paperwork burden reductions.

In order to rectify this problem there needs to be an enforceable penalty provision in the PRA for unsubstantiated certifications. If U.S. businesses can be held strictly accountable for recordkeeping and reporting requirements under a vast array of laws and regulations, then the federal government should be held to the same certification standards.

For example, under Sarbanes-Oxley, CEOs face civil and criminal penalties for any false or misleading statement reported to the federal government. Likewise, under the Clean Water Act, businesses have been found civilly liable for tens of thousands of dollars in fines **per day** for mere clerical errors in their filings—like a missing zip code—because it was automatically deemed to be a false statement.[17] Strict penalties for the improper certification of hazardous waste are incorporated into the Solid Waste Disposal Act,[18] and similar provisions can be found in the Clean Air Act,[19] the Toxic Substances Control Act,[20] and in many other laws that operate to impose tens and hundreds of thousands of dollars in penalties for paperwork violations.

If the federal government were held to similarly draconian standards for every unsubstantiated certification—that is, those certifications that lack underlying support —then it is very likely that far fewer ICR's would be approved. As a result, the

---

[16] "Paperwork Reduction Act: Burden Reduction May Require a New Approach," Testimony Before the Subcommittee on Regulatory Affairs, Committee on Government Reform, House of Representatives, GAO, June 14, 2005.

[17] CWA, 33 USC §1318(c)(4): "False Statements. Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document…shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both."

[18] SWDA, 42 USC §6928(d): "Any person who…knowingly omits material from any information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with regulations…shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed two years…."

[19] CAA, 42 USC §7413(c) and (d).

[20] TSCA, 15 USC §2614(a) and (b).

American business community would almost certainly witness a real reduction in paperwork burden hours inflicted on it.

Therefore, the U.S Chamber recommends that Congress amend the PRA to include penalty provisions and enforcement mechanisms—similar in strength of consequences to those imposed on most U.S. businesses—to ensure the integrity of the information collection process. The penalty should be monetary and paid for by the CIO that signed the certification. Al penalties could be paid to OIRA to help offset the cost of administering a more stringent ICR certification process. An additional penalty, such as a reduction in personnel levels for the CIO's agency, should also be considered. Federal agency CIO's must recognize that it is just as important for government to file accurate reports as it is for the business community.

B. Mandatory Burden Reduction Levels

The 1995 amendments to the PRA included annual **mandatory** paperwork reduction levels. Specifically, federal agencies were required to reduce their collection burdens by 10% in fiscal years 1996 and 1997, and then by 5% in each fiscal year from 1998 through 2001. Meeting these goals would reduce the amount of federal paperwork by 35%, from about 7 billion burden hours at the end of fiscal year 1995 to approximately 4.6 billion hours at the end of fiscal year 2001. Thereafter, federal agencies were to set annual reduction goals to limit the paperwork burden on the public to the maximum extent possible. In this manner, paperwork reductions would be guaranteed to occur so that, by today, the American business community could expect the number of burden hours on the public to have been significantly pared down.

The mandatory reductions levels, however, were enforced with the same lack of stringency as the CIO certification process—that is to say, not at all. In fact, since the passage of the 1995 amendments the paperwork burden in this country has increased annually and exponentially. Last year, there were more paperwork burden hours on the American public than ever before.

Again, the problem with achieving the PRA's mandatory reduction levels is the lack of an enforcement mechanism or penalty provision. The only way a federal agency will take steps to mitigate its paperwork burden will be if penalties are imposed for failure to meet specified reduction goals.

It must be noted that many agencies contend that they cannot reduce their paperwork requirements without changes in their authorizing statutes, many of which require the collection of certain types of information. Congress should examine the validity of this claim as part of its effort to address paperwork reduction. Nevertheless, the PRA is meant to discourage the unnecessary collection of information and, ultimately, strictly enforcing the PRA will force agencies to be more efficient in their operations. If an agency cannot meet a congressionally mandated reduction because of a statutory obligation, it should immediately report that conflict to Congress. Otherwise, the agency must obey congressional mandates or face a penalty, e.g. a reduction in budget or personnel.

V. OTHER RECOMMENDATIONS TO STRENGTHEN THE PRA

There are other additional options that Congress could take to ensure the quality and integrity of the regulatory process.

A. Increase Resources to OIRA

In order to properly enforce the provisions of the PRA, as discussed above, additional resources will be needed by OIRA. As such, the U.S. Chamber recommends that Congress increase the budget of OIRA to allow for the hiring of new personnel who can focus specifically on the paperwork reduction efforts of federal agencies.

B. Codify Executive Order 12866

When Executive Order 12866 was issued in 1993, it imposed on agencies an affirmative duty to assess the costs and benefits of potential regulations and to maximize the net benefits to the public. In developing only those regulations that were necessary to interpret the law, agencies were admonished to avoid unduly burdening the public. When collecting information on which to base its regulatory decisions, agencies were directed to collect only…*the best reasonably obtainable scientific, technical, economic, and other information*…[21] Presumably, the purpose behind this language was to prevent agencies from unduly burdening the public with excessive, duplicative, and onerous requests for information. In this manner, it parallels the objectives of the PRA.

By codifying Executive Order 12866, Congress would lend additional credence—as well as the force of law—to a Presidential Order that has been continually hailed under Democratic and Republican administrations as both far-sighted and effective. As such, the U.S. Chamber believes that codifying Executive Order 12866 would help to further reduce the growing paperwork burden on U.S. businesses in this country.

---

[21] Executive Order 12866; Fed. Reg. Vol. 58, No. 190, Sec. 1(b)(7).

C. Look-back Provisions

One of the best conceived, but most poorly utilized, concepts for reducing government paperwork burdens is the "look-back" provision. Look-back provisions were designed to force federal agencies to periodically review their existing regulations and determine whether those regulations should be continued, modified, or rescinded. In this way, an agency's regulatory program would be streamlined as ineffective regulations were eliminated or modified to be less burdensome to the regulated community.

There are several examples of these look-back provisions in various presidential executive orders, statutory provisions, and OMB directives. It is worth briefly examining some of these provisions in order to understand their potential utility for reducing paperwork burdens for the business community.

1. Executive Orders

a. Executive Order 12044

President Carter issued Executive Order 12044, "Improving Government Regulations," in 1978. This Executive Order established requirements for the centralized review of regulations, the preparation of regulatory analyses, and the consideration of alternatives, and also required federal agencies to periodically review their existing regulations.[22]

Following this theme, President George H.W. Bush sent a memorandum to all federal agencies in 1992 calling for a 90-day moratorium on new regulations. During this time the agencies were to...*evaluate existing regulations and programs and to identify and accelerate action on initiatives that will eliminate any unnecessary regulatory burden or otherwise promote economic growth.*[23]

b. Executive Order 12866

In 1993, President Clinton enhanced this deregulatory process by issuing Executive Order 12866, "Regulatory Planning and Review." Section 5 of the order requires each federal agency to submit a program to OIRA to...*periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated...*[24]

---

[22] Executive Order 12044, *Improving Government Regulations*, stated that the periodic review of regulations was necessary to ensure that agencies do not impose unnecessary burdens on the economy, individuals, private organizations, or State and local government. 43 Fed. Reg. 12661 (March 24, 1978).
[23] Memorandum titled "Reducing the Burden of Government Regulation," by Pres. George W. Bush to All Federal Agencies, dated January 28, 1992.
[24] 58 Fed. Reg. 51735 (September 30, 1993).

President Clinton also ordered a "page by page" review of all regulations in 1995, in an effort to eliminate or revise those that were outdated or in need of reform.

Despite these attempts to make regulatory reviews a regular practice by federal agencies, most agencies failed to develop any systematic review process. As a result, presidential calls for periodic look-backs have proven largely ineffective.

2. Section 610 of the Regulatory Flexibility Act

The most widely cited statutory look-back requirement for federal agencies is Section 610 of the Regulatory Flexibility Act of 1980 (RFA).[25] Section 610 of the RFA specifically requires each federal agency to develop a plan for the periodic review of regulations that have, or will have, a significant economic impact on a substantial number of small entities. The purpose of the review is to determine whether each rule should be retained, amended, or rescinded (consistent with the objectives of the underlying statute) to minimize its impact on small entities.

Unfortunately, Section 610 has been widely perceived as ineffective for reviewing existing regulations. Agency confusion about how and when to assess the economic impact of rules and how to provide proper public notice about the reviews being conducted served to undercut the effectiveness of this provision. Few rules in existence are actually reviewed, and even fewer are retired or eliminated through this provision.[26]

3. OMB's Regulatory Reform Nominating Process

Under the current Bush Administration, OMB has sought to identify regulatory reform suggestions through a process of direct public nominations. OMB relied on the authority granted by Congress under the Regulatory Right-to-Know Act to initiate this call for reform.[27] The Regulatory Right-to-Know Act requires OMB to issue an annual report to Congress on the costs and benefits of regulations, including recommendations for reform.

On three separate occasions OMB requested and received public nominations of regulations in need of reform. These efforts, however, met with limited success due to a lack of follow-up, a lack of enforcement, and a lack of penalties.

---

[25] 5 U.S.C. 601 et seq.

[26] In the Fall 2005 Unified Agenda of Federal Regulatory and Deregulatory Actions, there were less than 30 rules that had been designated for §610 Review by all the federal agencies *combined.*

[27] 31 U.S.C § 1105, Pub. L. 106-554 (December 21, 2000).

There is little question that look-back provisions would have significant utility in reducing paperwork burdens for the American business community. Unless and until Congress begins to stringently enforce these provisions, we are unlikely to realize their full potential in addressing the growing paperwork and regulatory burden.

4. Look Back on Cost Benefit Analysis

The federal government and the public rely on cost/benefit analyses to determine the potential impact of regulations, which in turn helps companies to make informed business decisions. While agencies routinely prepare cost/benefit analyses for major rules, they do so before a regulation goes into effect. These pre-regulatory forecasts are notoriously inaccurate. Therefore, to better ensure the workability of the regulatory process, Congress should establish a pilot program for agencies to study the real cost and benefits of regulations at certain intervals, such as five and ten years. These types of post-validation studies would provide solid information on how the utility and effectiveness of a particular rule or regulation.

VI. CONCLUSION

The Chamber remains hopeful that the PRA will at last become an effective tool for reducing the paperwork burden on U.S. businesses and for promoting the integrity and utility of information collected and disseminated by the federal government.

I thank the committee for the opportunity to present the Chamber's views and recommendations about the Revising the Paperwork Reduction Act.